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UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN JOSE DIVISION

ADTRADER, INC., CLASSIC AND FOOD  
 EOOD, LML CONSULT LTD., AD CRUNCH  
 LTD., FRESH BREAK, LTD., and  
 SPECIALIZED COLLECTIONS BUREAU,  
 INC.,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 5:17-cv-07082 (BLF)

**STIPULATED PROTECTIVE ORDER**

Judge: Hon. Beth Labson Freeman  
 Trial Date: June 6, 2022

Re: Dkt. 65

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential,

proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the Parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The Parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The Parties further acknowledge, as set forth in Section 15.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the Court to file material under seal.

## 2. DEFINITIONS

2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.2 "CONFIDENTIAL" Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c), including, but not limited to, all information or material produced for or disclosed to a Receiving Party that a Designating Party, including any Party and any Non-Party producing information or material voluntarily or pursuant to a subpoena or court order, reasonably and in good faith considers to constitute confidential technical, sales, marketing, financial, or business information, or other commercially sensitive information, however embodied, that has been so designated by the Designating Party.

2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as their support staff).

2.4 OMITTED.

2.5 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE

1 CODE”.

2 2.6 Disclosure or Discovery Material: all items or information, regardless of the medium  
3 or manner in which it is generated, stored, or maintained (including, among other things, testimony,  
4 transcripts, and tangible things), that are produced or generated in disclosures or responses to  
5 discovery in this matter.

6 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to the  
7 litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as a  
8 consultant in this action, (2) is not a past or current employee of a Party or of a Party’s competitor,  
9 and (3) at the time of retention, is not anticipated to become an employee of a Party or of a Party’s  
10 competitor.

11 2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items:  
12 extremely sensitive “Confidential Information or Items,” disclosure of which to another Party or Non-  
13 Party would create a substantial risk of serious harm that could not be avoided by less restrictive  
14 means, including, but not limited to: (i) marketing, financial, sales, web traffic, research and  
15 development, or technical data or information; (ii) commercially sensitive competitive information,  
16 including, without limitation, information obtained from a Non-Party pursuant to a current  
17 Nondisclosure Agreement (“NDA”); (iii) information or data relating to future products not yet  
18 commercially released and/or strategic plans; (iv) trade secret, or other confidential research and  
19 development information; and (v) commercial agreements, settlement agreements, or settlement  
20 communications, the disclosure of which is likely to cause harm to the competitive position of the  
21 Producing Party.

22 2.9 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items: extremely  
23 sensitive “Confidential Information or Items” representing computer code and associated comments  
24 and revision histories, formulas, engineering specifications, or schematics that define or otherwise  
25 describe in detail the algorithms or structure of software or hardware designs, disclosure of which to  
26 another Party or Non-Party would create a substantial risk of serious harm that could not be avoided  
27 by less restrictive means.

28 2.10 House Counsel: attorneys who are members in good standing of at least one state bar,

1 who are employees of a Party, and who have responsibility for managing this action. House Counsel  
2 does not include Outside Counsel of Record or any other outside counsel.

3 2.11 Non-Party: any natural person, partnership, corporation, association, or other legal  
4 entity not named as a Party to this action.

5 2.12 Outside Counsel of Record: attorneys who are not employees of a Party to this action  
6 but are retained to represent or advise a Party to this action and have appeared in this action on behalf  
7 of that Party or are affiliated with a law firm which has appeared on behalf of that Party.

8 2.13 Party: any party to this action, including all of its officers, directors, employees,  
9 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

10 2.14 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material  
11 in this action.

12 2.15 Professional Vendors: persons or entities that provide litigation support services (e.g.,  
13 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing,  
14 or retrieving data in any form or medium) and their employees and subcontractors.

15 2.16 Protected Material: any Disclosure or Discovery Material that is designated as  
16 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or as  
17 “HIGHLY CONFIDENTIAL – SOURCE CODE”, including any information copied or extracted  
18 therefrom or otherwise reflecting Protected Material in any form.

19 2.17 Receiving Party: a Party that receives Disclosure or Discovery Material from a  
20 Producing Party.

### 21 3. SCOPE

22 The protections conferred by this Stipulation and Order cover not only Protected Material (as  
23 defined above), but also (1) any information copied or extracted from Protected Material; (2) all  
24 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,  
25 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.  
26 However, the protections conferred by this Stipulation and Order do not cover the following  
27 information: (a) any information that is in the public domain at the time of disclosure to a Receiving  
28 Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of

publication not involving a violation of this Order, including becoming part of the public record through trial or otherwise; and (b) any information known to the Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the information lawfully and under no obligation of confidentiality to the Designating Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

4. DURATION

Even after final disposition of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this action, with or without prejudice; or (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. To the extent it is practical to do so, the Designating Party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify – so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber or retard the case development process or to impose unnecessary expenses and burdens on other parties) expose the Designating Party to sanctions.

If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection at all or do not qualify for the level of protection initially asserted, that Designating Party must promptly notify all other parties that it is withdrawing the mistaken designation.

1           5.2     Manner and Timing of Designations. Except as otherwise provided in this Order (see,  
2 e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or  
3 Discovery Material that qualifies for protection under this Order must be clearly so designated before  
4 the material is disclosed or produced.

5           Designation in conformity with this Order requires:

6           (a) for information in documentary form (e.g., paper or electronic documents, but excluding  
7 transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the  
8 legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or  
9 “HIGHLY CONFIDENTIAL – SOURCE CODE” to each page that contains protected material. If  
10 only a portion or portions of the material on a page qualifies for protection and if practicable to do so,  
11 the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate  
12 markings in the margins) and must specify, for each portion, the level of protection being asserted.

13           A Party or Non-Party that makes original documents or materials available for inspection need  
14 not designate them for protection until after the inspecting Party has indicated which material it would  
15 like copied and produced. During the inspection and before the designation, all of the material made  
16 available for inspection shall be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
17 ONLY.” After the inspecting Party has identified the documents it wants copied and produced, the  
18 Producing Party must determine which documents, or portions thereof, qualify for protection under  
19 this Order. Then, before producing the specified documents, the Producing Party must affix the  
20 appropriate legend (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
21 ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE”) to each page that contains Protected  
22 Material. If only a portion or portions of the material on a page qualifies for protection and if  
23 practicable to do so, the Producing Party also must clearly identify the protected portion(s) (e.g., by  
24 making appropriate markings in the margins) and must specify, for each portion, the level of protection  
25 being asserted.

26           (b) for testimony given in deposition or in other pretrial or trial proceedings, that the  
27 Designating Party identify on the record, before the close of the deposition, hearing, or other  
28 proceeding, all protected testimony and specify the level of protection being asserted. When it is

1 impractical to identify separately each portion of testimony that is entitled to protection and it appears  
 2 that substantial portions of the testimony may qualify for protection, the Designating Party may invoke  
 3 on the record (before the deposition, hearing, or other proceeding is concluded) a right to have up to  
 4 21 days to identify the specific portions of the testimony as to which protection is sought and to specify  
 5 the level of protection being asserted. Only those portions of the testimony that are appropriately  
 6 designated for protection within the 21 days shall be covered by the provisions of this Stipulated  
 7 Protective Order. Alternatively, a Designating Party may specify, at the deposition or up to 21 days  
 8 afterwards if that period is properly invoked, that the entire transcript shall be treated as  
 9 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

10 Parties shall give the other Parties notice if they reasonably expect a deposition, hearing or  
 11 other proceeding to include Protected Material so that the other Parties can ensure that only authorized  
 12 individuals who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A) are  
 13 present at those proceedings. The use of a document as an exhibit at a deposition shall not in any way  
 14 affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
 15 ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE.”

16 Transcripts containing Protected Material shall have an obvious legend on the title page that  
 17 the transcript contains Protected Material, and the title page shall be followed by a list of all pages  
 18 (including line numbers as appropriate) that have been designated as Protected Material and the level  
 19 of protection being asserted by the Designating Party. The Designating Party shall inform the court  
 20 reporter of these requirements. Any transcript that is prepared before the expiration of the 21-day  
 21 period for designation shall be treated during that period as if it had been designated “HIGHLY  
 22 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed by the  
 23 Parties. After the expiration of that period, the transcript shall be treated only as actually designated.

24 (c) for information produced in some form other than documentary and for any other tangible  
 25 items, that the Producing Party affix in a prominent place on the exterior of the container or containers  
 26 in which the information or item is stored the legend “CONFIDENTIAL” or “HIGHLY  
 27 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE  
 28 CODE.” If only a portion or portions of the information or item(s) warrant protection, the Producing



1 Party, to the extent practicable, shall identify the protected portion(s) and specify the level of  
2 protection being asserted.

3 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
4 designate qualified information or items does not, standing alone, waive the Designating Party's right  
5 to secure protection under this Order for such material. Within a reasonable time after discovering an  
6 inadvertent failure to properly designated qualified information or items, the Designating Party shall  
7 provide written notice to the Receiving Party, and shall furnish the Receiving Party with replacement  
8 pages with the appropriate designation(s). Upon timely correction of a designation, the Receiving  
9 Party must make reasonable efforts to assure that the material is treated in accordance with the  
10 provisions of this Order, and shall return or destroy the improperly designated material.

## 11 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

12 6.1 Timing of Challenges. Any Party may challenge a designation of confidentiality at any  
13 time. Unless a prompt challenge to a Designating Party's confidentiality designation is necessary to  
14 avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption  
15 or delay of the litigation, a Party does not waive its right to challenge a confidentiality designation by  
16 electing not to mount a challenge promptly after the original designation is disclosed.

17 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by  
18 providing written notice of each designation it is challenging and describing the basis for each  
19 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must recite  
20 that the challenge to confidentiality is being made in accordance with this specific paragraph of the  
21 Protective Order. The Parties shall attempt to resolve each challenge in good faith, as required by the  
22 "Discovery dispute resolution" (the "Discovery Dispute Guidelines") process in the Court's<sup>1</sup> Standing  
23 Order for Civil Cases, and must begin the process by conferring directly (in voice to voice dialogue;  
24 other forms of communication are not sufficient) within 5 court days of the date of service of notice.  
25 Lead counsel must actively engage in discussion of the dispute, though others may participate in the

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27 <sup>1</sup> Pursuant to the June 7, 2018 Reassignment Order (Dkt. 53), reassigning this case to Magistrate Judge  
28 Virginia K. DeMarchi, and Judge Freeman's Case Management Order of June 21, 2018 (Dkt. 60),  
"[a]ll disputes with respect to disclosures or discovery are referred to [Magistrate Judge DeMarchi]."



1 conference to assist lead counsel. In conferring, the Challenging Party must explain the basis for its  
 2 belief that the confidentiality designation was not proper and must give the Designating Party an  
 3 opportunity to review the designated material, to reconsider the circumstances, and, if no change in  
 4 designation is offered, to explain the basis for the chosen designation. A Challenging Party may  
 5 proceed to the next stage of the challenge process in the Discovery Dispute Guidelines only if it has  
 6 engaged in this meet and confer process first, or establishes that the Designating Party is unwilling to  
 7 participate in the meet and confer process in a timely manner.

8       6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court  
 9 intervention, the Designating Party shall initiate the drafting of a joint letter to the Court, pursuant to  
 10 the Discovery Dispute Guidelines, and shall send the draft—which shall include all subparts required  
 11 by the Discovery Dispute Guidelines—to the Challenging Party within 5 court days after the  
 12 conference of lead counsel. The Challenging Party shall have 5 court days to draft its sections of the  
 13 joint letter required by the Discovery Dispute Guidelines, and the Designating Party shall then file the  
 14 joint letter with the Court. Failure by the Designating Party to provide said draft of the letter (with all  
 15 subparts) to the Challenging Party, within 5 court days after the conference of lead counsel shall  
 16 automatically waive the confidentiality designation for each challenged designation.

17       The burden of persuasion in any such challenge proceeding shall be on the Designating Party.  
 18 Frivolous challenges and those made for an improper purpose (e.g., to harass or impose unnecessary  
 19 expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the  
 20 Designating Party has waived the confidentiality designation by failing to draft the joint letter required  
 21 by the Discovery Dispute Guidelines, as described above, all Parties shall continue to afford the  
 22 material in question the level of protection to which it is entitled under the Producing Party's  
 23 designation until the Court rules on the challenge.

## 24 7. ACCESS TO AND USE OF PROTECTED MATERIAL

25       7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or  
 26 produced by another Party or by a Non-Party in connection with this case only for prosecuting,  
 27 defending, or attempting to settle this litigation and shall not use said Protected Material for any  
 28 business purpose, in connection with any other legal proceeding (except as otherwise agreed by the

Parties), or directly or indirectly for any other purpose whatsoever. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order.<sup>2</sup> When the litigation has been terminated, a Receiving Party must comply with the provisions of Section 16 below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order. Protected Material shall not be copied or otherwise reproduced by a Receiving party, except for transmission to qualified recipients, without the written permission of the Producing Party or by further order of the Court.

7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “CONFIDENTIAL” only to:

(a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A;

(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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<sup>2</sup> In the event a Non-Party witness is authorized to receive Protected Material that is to be used during his/her deposition but is represented by an attorney not authorized under this Order to receive such Protected Material, the attorney must provide, prior to commencement of the deposition, an executed “Acknowledgment and Agreement to Be Bound” in the form attached hereto as Exhibit A. In the event such attorney declines to sign the “Acknowledgment and Agreement to Be Bound” prior to the examination, the Parties, by their attorneys, shall jointly seek a protective order from the Court prohibiting the attorney from disclosing Protected Material in order for the deposition to proceed.

1 (d) the Court and its personnel;

2 (e) court reporters, videographers, and their staff, professional jury or trial consultants, and  
3 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have  
4 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

5 (f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary  
6 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless  
7 otherwise agreed by the Designating Party or ordered by the Court. Pages of transcribed deposition  
8 testimony or exhibits to depositions that reveal Protected Material must be separately bound by the  
9 court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective  
10 Order.

11 (g) the author or recipient of a document containing the information or a custodian or other  
12 person who otherwise possessed or personally knows the information.

13 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” and  
14 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items.

15 (a) Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a  
16 Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL –  
17 ATTORNEYS’ EYES ONLY” only to:

18 (i) the Receiving Party’s Outside Counsel of Record in this action, as well as employees  
19 of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for  
20 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is  
21 attached hereto as Exhibit A;

22 (ii) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for  
23 this litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),  
24 and (3) as to whom the procedures set forth in Paragraph 7.4, below, have been followed;

25 (iii) the Court and its personnel;

26 (iv) court reporters, videographers, and their staff, professional jury or trial consultants,  
27 and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have  
28 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

(v) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or personally knows the information.

(b) Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL – SOURCE CODE” only to:

(i) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A;

(ii) Up to three Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in Paragraph 7.4, below, have been followed, acknowledging that the Receiving Party may request in writing the ability to disclose “HIGHLY CONFIDENTIAL – SOURCE CODE” information or items to additional Experts, but that such disclosure may be made only upon prior written approval by the Designating Party, which shall not be unreasonably withheld;

(iii) the Court and its personnel;

(iv) stenographic reporters, videographers and their respective staff who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A) and are transcribing or videotaping a deposition wherein “HIGHLY CONFIDENTIAL – SOURCE CODE” information or items are being discussed, provided that such reporters and videographers shall not retain or be given copies of any portions of the source code, which, if used during a deposition, will not be attached as an exhibit to the transcript but instead shall be identified only by its production; and

(v) while testifying at deposition or trial in this action only: (i) any current or former officer, director, or employee of the Producing Party or original source of the information; (ii) any person designated by the Producing Party to provide testimony pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure; and/or (iii) any person who authored, previously received (other than in connection with this litigation), or was directly involved in creating, modifying, or editing the

1 “HIGHLY CONFIDENTIAL – SOURCE CODE” information or items, as evident from its face or  
 2 reasonably certain in view of other testimony or evidence. Persons authorized to view “HIGHLY  
 3 CONFIDENTIAL – SOURCE CODE” information or items pursuant to this sub-paragraph shall not  
 4 retain or be given copies of the “HIGHLY CONFIDENTIAL – SOURCE CODE” information or items  
 5 except while so testifying.

6 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL –  
 7 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or  
 8 Items to Experts.

9 (a) Unless otherwise ordered by the Court or agreed to in writing by the Designating  
 10 Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item that  
 11 has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY  
 12 CONFIDENTIAL – SOURCE CODE” pursuant to Paragraph 7.3(a) or (b) first must make a written  
 13 request to the Designating Party that (1) identifies the general categories of “HIGHLY  
 14 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE  
 15 CODE” information that the Receiving Party seeks permission to disclose to the Expert, (2) sets forth  
 16 the full name of the Expert and the city and state of his or her primary residence, (3) attaches a copy  
 17 of the Expert’s current resume, (4) identifies the Expert’s current employer(s), (5) identifies each  
 18 person or entity from whom the Expert has received compensation or funding for work in his or her  
 19 areas of expertise or to whom the Expert has provided professional services, including in connection  
 20 with a litigation, at any time during the preceding five years,<sup>3</sup> and (6) identifies (by name and number  
 21 of the case, filing date, and location of court) any litigation in connection with which the Expert has  
 22 offered expert testimony, including through a declaration, report, or testimony at a deposition or trial,  
 23 during the preceding five years.

24 (b) A Party that makes a request and provides the information specified in the preceding  
 25 \_\_\_\_\_

26 <sup>3</sup> If the Expert believes any of this information is subject to a confidentiality obligation to a third-  
 27 party, then the Expert should provide whatever information the Expert believes can be disclosed  
 28 without violating any confidentiality agreements, and the Party seeking to disclose to the Expert  
 shall be available to meet and confer with the Designating Party regarding any such engagement.

1 respective paragraphs may disclose the subject Protected Material to the identified Expert unless,  
 2 within 14 days of delivering the request, the Party receives a written objection from the Designating  
 3 Party. Any such objection must set forth in detail the grounds on which it is based.

4 (c) A Party that receives a timely written objection must meet and confer with the  
 5 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement  
 6 within seven business days of the written objection. If no agreement is reached, the Party seeking to  
 7 make the disclosure to the Expert may initiate the drafting of a joint letter to the Court, pursuant to the  
 8 Discovery Dispute Guidelines, seeking permission from the Court to do so. The Party seeking to make  
 9 the disclosure to the Expert must describe the circumstances with specificity, set forth in detail the  
 10 reasons why the disclosure to the Expert is reasonably necessary, assess the risk of harm that the  
 11 disclosure would entail, and suggest any additional means that could be used to reduce that risk. The  
 12 Designating Party shall have 5 court days from the date it receives the draft of the joint letter to draft  
 13 its sections required by the Discovery Dispute Guidelines. The Party seeking to make the disclosure  
 14 to the Expert shall then file the joint letter with the Court.

15 In any such proceeding, the Party opposing disclosure to the Expert shall bear the burden of  
 16 proving that the risk of harm that the disclosure would entail (under the safeguards proposed)  
 17 outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

18 8. SOURCE CODE

19 (a) To the extent production of source code becomes necessary in this case, a  
 20 Producing Party may designate source code as "HIGHLY CONFIDENTIAL – SOURCE CODE" if it  
 21 comprises or includes confidential, proprietary, or trade secret source code.

22 (b) Protected Material designated as "HIGHLY CONFIDENTIAL – SOURCE  
 23 CODE" shall be subject to all of the protections afforded to "HIGHLY CONFIDENTIAL –  
 24 ATTORNEYS' EYES ONLY" information, and may be disclosed only to the individuals to whom  
 25 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" information may be disclosed, as set  
 26 forth in Paragraphs 7.3 and 7.4.

27 (c) Any source code produced in discovery shall be made available for inspection,  
 28 in a format allowing it to be reasonably reviewed and searched, during normal business hours or at

1 other mutually agreeable times, at an office of the Producing Party's counsel or another mutually  
2 agreed upon location. The source code shall be made available for inspection on a secured computer  
3 in a secured room without Internet access or network access to other computers, and the Receiving  
4 Party shall not copy, remove, or otherwise transfer any portion of the source code onto any recordable  
5 media or recordable device. The Producing Party may visually monitor the activities of the Receiving  
6 Party's representatives during any source code review, but only to ensure that there is no unauthorized  
7 recording, copying, or transmission of the source code.

8 (d) The Receiving Party may request paper copies of limited portions of source  
9 code that are reasonably necessary for the preparation of court filings, pleadings, expert reports, or  
10 other papers, or for deposition or trial, but shall not request paper copies for the purposes of reviewing  
11 the source code other than electronically as set forth in Paragraph 8(c) in the first instance. In no event  
12 may the receiving party print more than 25 consecutive pages, or an aggregate total of more than 500  
13 pages, of source code during the duration of the case without prior written approval by the Producing  
14 Party, which shall not be unreasonably withheld. The Producing Party shall provide all such source  
15 code in paper form including bates numbers and the label "HIGHLY CONFIDENTIAL - SOURCE  
16 CODE." The Producing Party may challenge the amount of source code requested in hard copy form  
17 pursuant to the dispute resolution procedure and timeframes set forth in Section 6 whereby the  
18 Producing Party is the "Challenging Party" and the Receiving Party is the "Designating Party" for  
19 purposes of dispute resolution.

20 (e) The Receiving Party shall maintain a record of any individual who has  
21 inspected any portion of the source code in electronic or paper form. The Receiving Party shall  
22 maintain all paper copies of any printed portions of the source code and/or permit such paper copies  
23 to be viewed only at (i) the offices of outside counsel for the Receiving Party; (ii) the offices of outside  
24 experts or consultants who have been approved to access source code; (iii) the site where any  
25 deposition is taken; (iv) the Court; or (v) any intermediate location necessary to transport the  
26 information to a hearing, trial or deposition. Any such paper copies shall be maintained at all times in  
27 a secure location under the direct control of counsel responsible for maintaining the security and  
28 confidentiality of the designated materials. The Receiving Party shall not create any electronic or other



1 images of the paper copies and shall not convert any of the information contained in the paper copies  
 2 into any electronic format. The Receiving Party shall only make additional paper copies if such  
 3 additional copies are (1) necessary to prepare court filings, pleadings, or other papers (including a  
 4 testifying expert's expert report), (2) necessary for deposition, or (3) otherwise necessary for the  
 5 preparation of its case. Any paper copies used during a deposition shall be retrieved by the Producing  
 6 Party at the end of each day and must not be given to or left with a court reporter or any other  
 7 unauthorized individual.

8 9. OMITTED

9 10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
 10 LITIGATION

11 If a Party is served with a subpoena or a court order issued in other litigation that compels  
 12 disclosure of any information or items designated in this action as "CONFIDENTIAL" or "HIGHLY  
 13 CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE  
 14 CODE" that Party must:

15 (a) promptly notify in writing the Designating Party. Such notification shall include a  
 16 copy of the subpoena or court order;

17 (b) promptly notify in writing the party who caused the subpoena or order to issue in  
 18 the other litigation that some or all of the material covered by the subpoena or order is subject to this  
 19 Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

20 (c) cooperate with respect to all reasonable procedures sought to be pursued by the  
 21 Designating Party whose Protected Material may be affected.<sup>4</sup>

22 If the Designating Party timely<sup>5</sup> seeks a protective order, the Party served with the subpoena  
 23 or court order shall not produce any information designated in this action as "CONFIDENTIAL" or  
 24 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL –

25 \_\_\_\_\_  
 26 <sup>4</sup> The purpose of imposing these duties is to alert the interested parties to the existence of this  
 27 Protective Order and to afford the Designating Party in this case an opportunity to try to protect its  
 28 confidentiality interests in the court from which the subpoena or order issued.

<sup>5</sup> The Designating Party shall have at least 14 days from the service of the notification pursuant to  
 Section 10(a) to seek a protective order.

1 SOURCE CODE” before a determination by the Court from which the subpoena or order issued,  
 2 unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the  
 3 burden and expense of seeking protection in that court of its confidential material – and nothing in  
 4 these provisions should be construed as authorizing or encouraging a Receiving Party in this action to  
 5 disobey a lawful directive from another court.

6 11. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS  
 7 LITIGATION

8 (a) The terms of this Order are applicable to information produced by a Non-Party  
 9 in this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
 10 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE.” Such  
 11 information produced by Non-Parties in connection with this litigation is protected by the remedies  
 12 and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a  
 13 Non-Party from seeking additional protections.

14 (b) In the event that a Party is required, by a valid discovery request, to produce a  
 15 Non-Party’s confidential information in its possession, and the Party is subject to an agreement with  
 16 the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

17 (i) promptly notify in writing the Requesting Party and the Non-Party that  
 18 some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

19 (ii) promptly provide the Non-Party with a copy of the Stipulated Protective  
 20 Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the  
 21 information requested; and

22 (iii) make the information requested available for inspection by the Non-  
 23 Party.

24 (c) If the Non-Party fails to object or seek a protective order from this Court within  
 25 14 days of receiving the notice and accompanying information, the Receiving Party may produce the  
 26 Non-Party’s confidential information responsive to the discovery request. If the Non-Party timely  
 27 seeks a protective order, the Receiving Party shall not produce any information in its possession or  
 28 control that is subject to the confidentiality agreement with the Non-Party before a determination by

the Court.<sup>6</sup> Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this Court of its Protected Material.

## 12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

## 13. PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. A Producing Party may assert privilege or protection over produced documents at any time by notifying the Receiving Party in writing of the assertion of privilege or protection. After being notified, a party must promptly return or destroy the specified information and any copies it has and may not sequester, use or disclose the information until the claim is resolved. This includes a restriction against presenting the information to the Court for a determination of the claim. In addition, information that contains privileged matter or attorney work product shall be immediately returned if such information appears on its face to have been inadvertently produced. Pursuant to Federal Rule of Evidence 502(d) and (e), the production of a privileged or work-product-protected document is not a waiver of privilege or protection from discovery in this case or in any other federal or state proceeding. For example, the mere production of privileged or work-product-protected documents in this case as

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<sup>6</sup> The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality interests in this Court.

part of a mass production is not itself a waiver in this case or any other federal or state proceeding.

14. OMITTED

15. MISCELLANEOUS

15.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

15.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order, no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

15.3 Filing Protected Material. Without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons, a Party may not file in the public record in this action any Protected Material. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a Receiving Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-5(e) is denied by the Court, then the Receiving Party may file the Protected Material in the public record pursuant to Civil Local Rule 79-5(e)(2) unless otherwise instructed by the Court.

15.4 Agreement Upon Execution. Each of the Parties agrees to be bound by the terms of this Stipulated Protective Order as of the date counsel for such party executes this Stipulated Protective Order, even if prior to entry of this Order by the Court.

16. FINAL DISPOSITION

Within 60 days after the final disposition of this action, as defined in Paragraph 4, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations,

1 summaries, and any other format reproducing or capturing any of the Protected Material. Whether the  
2 Protected Material is returned or destroyed, the Receiving Party must submit a written certification to  
3 the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60-day  
4 deadline that (1) identifies (by category, where appropriate) all the Protected Material that was  
5 returned or destroyed; and (2) affirms that the Receiving Party has not retained any copies, abstracts,  
6 compilations, summaries, or any other format reproducing or capturing any of the Protected Material.  
7 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings,  
8 motions and trial briefs (including all supporting and opposing papers and exhibits thereto), written  
9 discovery requests and responses (and exhibits thereto), deposition transcripts (and exhibits thereto),  
10 trial transcripts, and exhibits offered or introduced into evidence at any hearing or trial, and their  
11 attorney work product which refers or is related to any CONFIDENTIAL information for archival  
12 purposes only. Any such archival copies that contain or constitute Protected Material remain subject  
13 to this Protective Order as set forth in Section 4 (DURATION).

14 ///

15 ///

16 ///

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2  
3 DATED: July 27, 2018

GAW | POE LLP  
RANDOLPH GAW (223718)  
MARK POE (223714)  
SAMUEL SONG (245007)  
VICTOR MENG (254102)

6  
7 /s/ Randolph Gaw

Randolph Gaw  
Attorneys for Plaintiffs  
AdTrader, Inc. et al.

8  
9  
10 DATED: July 27, 2018

COOLEY LLP  
MICHAEL G. RHODES (116127)  
JEFFREY M. GUTKIN (216083)  
KYLE C. WONG (224021)  
AUDREY J. MOTT-SMITH (300550)

13  
14 /s/ Jeffrey M. Gutkin

Jeffrey M. Gutkin  
Attorneys for Defendant  
Google LLC

15  
16  
17  
18  
19 PURSUANT TO STIPULATION, IT IS SO ORDERED.

20  
21 DATED: July 30, 2018


  
VIRGINIA K. DEMARCHI  
HONORABLE ~~BETH LABSON FREEMAN~~  
United States District Judge  
Magistrate

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address], declare under penalty of perjury that I have read in  
its entirety and understand the Stipulated Protective Order that was issued by the United States  
District Court for the Northern District of California on \_\_\_\_\_ [date] in the case of  
*AdTrader et al. v. Google LLC*, No. 5:17-cv-07082 (BLF). I agree to comply with and to be bound  
by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to  
so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly  
promise that I will not disclose in any manner any information or item that is subject to this  
Stipulated Protective Order to any person or entity except in strict compliance with the provisions of  
this Order.

I further agree to submit to the jurisdiction of the United States District Court for the  
Northern District of California for the purpose of enforcing the terms of this Stipulated Protective  
Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print or type full name] of  
\_\_\_\_\_ [print or type full address and telephone number] as  
my California agent for service of process in connection with this action or any proceedings related  
to enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_  
[printed name]

Signature: \_\_\_\_\_  
[signature]



**ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5-1(i)(3)**

I, Jeffrey M. Gutkin, attest that concurrence in the filing of this document has been obtained from the other signatory. Executed on July 27, 2018 in San Francisco, California.

/s/ Jeffrey M. Gutkin  
Jeffrey M. Gutkin

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